UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD REGION 8

LANDMARK FAMILY FOODS, INC. d/b/a CHURCH SQUARE SUPERMARKET

CASE NOS.

08-CA-37667

and

08-CA-38794

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 880

RESPONDENT'S MOTION IN OPPOSITION TO THE MOTION TO THE NATIONAL LABOR RELATIONS BOARD FOR SUMMARY JUDGMENT

Now comes Respondent, pursuant to the October 2, 2012 Order of the National Labor Relations Board (herein the "Board"), and hereby shows cause why the Acting General Counsel's Motion for Summary Judgment (filed September 28, 2012) should not be granted. Accordingly, Respondent respectfully requests that the Board deny the subject Motion for Summary Judgment of the Acting General Counsel.

The reasons in support of this motion are more fully set forth in the accompanying Brief in Support, which is made a part hereof and fully incorporated herein.

BRIEF IN SUPPORT

I. SUMMARY

In the Motion to the National Labor Relations Board for Summary Judgment (herein the "NLRB's MSJ"), the Acting General Counsel relies exclusively upon his belief that Respondent *unconditionally* admitted to the truth of the allegations set forth in the Amended Compliance Specification. (NLRB's MSJ, p. 4, ¶2.) However, this is clearly NOT the case. Rather, as explicitly set forth in Respondent's Answer to the Amended Compliance Specification, "any stipulations made on the part of Respondent" were **conditioned** upon the timely and amicable

settlement of this matter. (See Respondent's Answer to the Amended Compliance Specification, ¶2.) As evidenced by the subject filing of the NLRB's MSJ, this condition precedent – the timely and amicable resolution of this matter – never occurred. Consequently, no valid admission of the Respondent exists to support the NLRB's MSJ.

II. DISCUSSION

Respondent's Answer to the Amended Compliance Specification (herein the "Amended Answer") states in relevant part:

2. Respondent further states that <u>any</u> stipulations made on the part of Respondent were made in an effort to settle this matter both timely and amicably, but certain acts of the Board have prevented both the timely and amicable resolution of this matter. (See Amended Answer, ¶2.) (Emphasis added.)

The NLRB's MSJ completely fails to acknowledge this portion of the Amended Answer and the effect it has on the Acting General Counsel's improper assertion that Respondent *unconditionally* admitted the truth of the allegations set forth in the Amended Compliance Specification. While the Acting General Counsel would have the Board believe that Respondent stipulated to the accuracy of the allegations set forth, the explicit language of the Amended Answer clearly shows that Respondent's admission was offered **only for settlement purposes**.

It has always been Respondent's desire to settle this matter. In attempting to do so, Respondent was informed by Acting General Counsel and/or the Board that, in order to reach any such settlement, Respondent must admit the allegations asserted by the Acting General Counsel and/or Board.¹ But before admitting to the allegations, the Amended Answer demonstrates Respondent's requirement that a settlement must first be in place.

As evidenced by the fact that this matter continues to remain ongoing, no such settlement

¹ At the very least, this fact alone necessitates a denial of the NLRB's MSJ, as it suggests that any subject admission of Respondent was offered under duress and/or false pretenses.

has been reached. Thus, the Respondent made no such admission, and the sole basis in support of

the NLRB's MSJ – the alleged admission of Respondent – does NOT even exist.

Instead, this matter is approaching its fifth year. Whereas Respondent desired a

settlement in this matter in order to remain in business (and made this fact well known to the

parties hereto), this action, as well as the associated federal court case, contributed significantly

in forcing Respondent to go out of business recently. Now, sadly, the employees which this

matter sought to protect, and who were well provided for by Respondent, are now out of work

and must find new jobs.

III. CONCLUSION

For the reasons stated herein, including the lack of any valid admission on the part of

Respondent, Landmark Family Foods Inc. d/b/a Church Square Supermarket respectfully moves

the Board to deny the NLRB's MSJ.

Dated at Cleveland, Ohio this 16th day of October 2012.

Respectfully submitted,

/s/ Si Harb

Si Harb, as President of

Landmark Family Foods d/b/a Church Square Supermarket

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent by Regular U.S. Mail, this day of October 2012, to the following:
Lawrence G. Plumb, VP & Director United Food and Commercial Workers 51 Cavalier Blvd, Suite 2440 Florence, KY 41042-3967
Daniel S. White, Esq. Schwarzwald, McNair, & Fusco 1300 East 9 th St., Suite 1600 Cleveland, OH 44114
United Food and Commercial Workers, Local 880 9199 Market Place, Suite 2 Broadview Hts, OH 44147-2834
Administrative Law Judges 1099 14 th St., N.W. Washington D.C. 20570
The undersigned hereby certifies that a copy of the foregoing was submitted electronically on October 16, 2012, to the following:
The Office of the Executive Secretary
Counsel for the Acting General Counsel National Labor Relations Board, Region 8
/s/ Si Harb
Si Harb, as President of Landmark Family Foods d/b/a Church Square Supermarket